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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

RAY B. FORD, Plaintiff and Appellant, v. SHERRI L. PEDERSEN, et al., Defendants and Respondents.	H021722 (Monterey County Super.Ct.No. M45360)

In this case, we consider the propriety of a demurrer sustained without leave to amend in an action filed against a superior court clerk for failure to timely file a complaint.

BACKGROUND

On August 10, 1999, plaintiff Ray B. Ford filed a complaint against Sherri L. Pedersen, Clerk of the Court and Court Administrator of the Superior Court of Monterey County, alleging personal injury from the act of initially rejecting a complaint he had attempted to file. Plaintiff alleged that the delay in filing resulted in personal injury and other damages of "Detriment" and "Deprived right to sue" because one of the named defendants had moved before the eventual nunc pro tunc filing of his complaint.

Previously, in September 1997, plaintiff, then incarcerated at Salinas Valley State Prison, had attempted to file a complaint for personal injury against the prison and its acting

warden, Gary Lindsey. The complaint[1] was printed by hand, not typewritten and was initially rejected for filing and returned to plaintiff with a notice stating: "We are unable to accept your complaint unless it is typewritten pursuant to California Rules of Court (201)." Eventually, on April 14, 1998, the complaint was filed nunc pro tunc as of September 24, 1997. However, according to plaintiff, Lindsey had moved and left no forwarding address so he could not be served with the complaint.

On October 22, 1999, defendant Pedersen filed a demurrer stating that the complaint failed to state a cause of action because she as a court officer (Court Administrator) came within the rule of judicial immunity. In a response pleading to plaintiff's document objecting to the demurrer, defendant further asserted that she was immune as a public employee based upon the discretionary immunity set forth in Government Code section 820.2 (hereafter section 820.2).

On November 22, 1999, the trial court sustained the demurrer without leave to amend on the basis of discretionary immunity under section 820.2.[2] Plaintiff's application for reconsideration was denied and judgment was entered on May 22, 2000. Plaintiff timely appeals.

DISCUSSION

In reviewing the ruling on a demurrer, "we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] . . . When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it

[1] The complaint was prepared on Form 982.1(1) approved by the Judicial Council.

[2] The order stated in part: "On the facts alleged, the court finds Defendant's determination and policy regarding the filing of handwritten pleadings is subject to discretionary immunity under Government Code section 820.2"

is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) All material allegations of the complaint are accepted as true. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8, fn. 3.) As only legal issues are raised, our review is independent of the trial court's review. (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1283.)[3]

The demurrer was granted on the basis of defendant's immunity for discretionary acts under section 820.2. That section provides a general immunity from liability for acts of public employees in the exercise of discretion vested in them. Section 820.2 states: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused."

In *Caldwell v. Montoya* (1995) 10 Cal.4th 972, a case concerning the immunity of elected members of a school board, the Supreme Court reviewed the background of section 820.2: "The common law of California long provided that a governmental official has personal immunity from lawsuits challenging his or her discretionary acts within the scope of authority. [Citation.] This common law immunity was said to extend to 'all executive public officers when performing within the scope of their power acts which require the exercise of discretion or judgment.' [Citation.] The immunity was absolute, and it protected an official 'notwithstanding malice or other sinister motive.' [Citation.]" (*Id.* at p. 979.) The Supreme Court went on to point out that the Senate Legislative Committee

[3] Plaintiff insists he is not challenging the trial court's abuse of discretion in granting the demurrer, but he is charging the court *erroneously* granted the demurrer. (See *Zuniga v. Housing Authority* (1995) 41 Cal.App.4th 82, 92 [" 'A trial court's ruling sustaining a demurrer is deemed erroneous where a plaintiff has stated a cause of action under any possible legal theory.' "].)

comment appended to section 820.2 declared that the statute restated the pre-existing California law. (*Id*. at p. 980.)

Thus, public officials are protected for performing their duties requiring the exercise of discretion. For example, in *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, this court determined that the County was immune from a lawsuit alleging negligent placement of a child in foster care and breach of mandatory duties by county child protective services. (See also *Ronald S. v. County of San Diego* (1993) 16 Cal.App.4th 887 [no civil liability for social service department in regard to adoption decisions].) Here, as the Monterey County Superior Court Clerk and Administrator, defendant was responsible for the appropriate filing of legal documents.

Plaintiff complains that the initial rejection of his complaint by defendant was not a discretionary act protected by statutory immunity, but was merely a ministerial function that was wrongly performed. He points out that the basis of determining whether an act is protected or not lies in the nature of the act and he insists that a court clerk fulfills only a ministerial function. (See *Union Bk & Tr. Co. v. Los Angeles County* (1934) 2 Cal.App.2d 600, 609 [courtroom clerk serves in ministerial capacity].)

However, when we closely examine the particular function at issue, that of filing court documents by establishing policies in conformance with any relevant statutory provisions and the California Rules of Court, we conclude discretion by the clerk of the court is required. The rule of court at issue here, California Rules of Court rule 201 (hereafter rule 201) outlines in elaborate detail the "Form of Papers presented for filing." In particular, rule 201(c) states: "[Size of paper, pagination, etc. and type style] All papers shall be typewritten or printed, or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally legible to printing, in type not smaller than 12 points, on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight, 8-1/2 by 11 inches in size. The typeface shall be essentially equivalent to Courier, Times or Helvetica. The color of print shall be blue-black or black."

Questions necessarily arise when these and other requirements are not complied with. Policies must be established and indeed many cases may require individual judgment or discretion. In fact, rule 201(j) specifically sets forth the clerk's discretion: "The clerk of the court shall not accept for filing or file any papers which do not comply with this rule, but for good cause shown the court may permit the filing of papers which do not comply." Immunity under section 820.2 protects against mistakes being made by the clerk in any determination of good cause.

Plaintiff focuses on the word "printed" in the rule to mean handwriting in the printed style as opposed to the cursive style. But a careful reading of the entire rule makes it obvious that the word printed actually means typography, or printing by a mechanical process and not handwriting. The minute detail which the rule sets out is clearly directed to a typing or mechanical printing process. (See rule 201(a)-(n).) Plaintiff insists that because his complaint was handwritten on a printed form, approved by the Judicial Council, defendant erred in initially refusing to file it. He complains that the correction notice sent by the clerk states all papers must be typewritten, when in fact rule 201 permits printing. But plaintiff misunderstands the use of the term printed in the rule. In addition, such mistakes by the clerk are protected under the statutory immunity of section 820.2.

Moreover, although the trial court did not rule specifically on quasi-judicial immunity, defendant is also protected from this lawsuit by judicial immunity, in that the activities of the clerk of the court in filing court documents are intimately related to the judicial process and thus are cloaked with judicial or quasi-judicial immunity. (See *Fisher v. Pickens* (1990) 225 Cal.App.3d 708 [quasi-judicial officers are protected by absolute immunity].

In *Howard v. Drapkin* (1990) 222 Cal.App.3d 843, the court cited with approval federal cases extending the doctrine of quasi-judicial immunity to various persons connected with the judicial process and explained: "We are persuaded that the approach of the federal courts is consistent with the relevant policy considerations of attracting to an

overburdened judicial system the independent and impartial services and expertise upon which that system necessarily depends. Thus, we believe it appropriate that these 'non-judicial persons who fulfill quasi-judicial functions intimately related to the judicial process' [citation] should be given absolute quasi-judicial immunity for damage claims arising from their performance of duties in connection with the judicial process. . . . Additionally, the threat of civil liability may affect the manner in which they perform their jobs." (*Id.* at p. 857.)

In questioning quasi-judicial immunity, plaintiff asserts that he sued Ms. Pedersen in her role as court clerk, not in her role as court administrator, which is how she was defended. He also argues that refusing to accept his papers was a negligent act and that misrepresenting the rule of court to reject his papers was fraud or misrepresentation, which is not protected by quasi-judicial immunity. His arguments hold no merit. Defendant Pedersen holds both positions and her duties overlap. We have determined that plaintiff misreads the rule of court and thus the clerk did not misrepresent the rule or fraudulently reject his papers. Any initial error in determining good cause to excuse his noncompliance with the court rules is protected by statutory or quasi-judicial immunity.

Nor, as plaintiff claims, was he denied access to the courts in violation of his constitutional rights. In fact, his complaint was eventually accepted for filing in its handwritten state and was filed nunc pro tunc as of the date he initially submitted it. Any lawsuit, such as plaintiff's suit against the prison and the warden of the prison, would survive a specific warden's departure.

DISPOSITION

The judgment is affirmed.

Wunderlich, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Elia, J.